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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,923	12/29/2003	Jeffrey Dean Lindsay	18587	7066

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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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09/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/747,923

Applicant(s)

LINDSAY ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

In view of the appeal brief filed on May 14, 2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



Tatyana Zalukaeva.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 5, the phrase "gecko-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by the suffix "-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-19, 24, 26, 27, 37-46 and 49-51 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Datta et al (U.S. Patent Application Publication No. 2002/0138064).

With respect to claim 1: Datta teaches an absorbent article 20 comprising an attachment means 60 comprising adhesive hairs in the form of hooks having adhesive thereon disposed on a flexible fastener substrate wherein said hairs are effective to adhesively engage an opposing surface comprising the waist region of outer cover 42 comprising a polyethylene film, which is a polymeric film. (¶¶ 0046,0067,0068,0070,0075)

With regard the limitation of a nanofabricated attachment means, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113. The burden shifts to applicant to come

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forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983) Alternatively, it would be obvious to one of ordinary skill in the art to modify the article of Datta so as contain a nanofabricated attachment means to provide a secure attachment means that functions equally as well as the instant attachment means with a reasonable expectation of success.

With respect to **claim 2**: The attachment means 60 has a packing density of 16-620 hooks or hairs per square centimeter, or 1,600-62,000 hairs per square millimeter, which overlaps the claimed range of at least 500 hairs per square millimeter. (¶ 0071)

With respect to **claim 3**: Datta teaches that the aspect ratio of hook head area to overall hook area is 40-55 percent. The aspect ratio is considered herein to be equal to the height to diameter ratio claimed, as the length component of the hook head (denoted as overhang 50) and the length of the stem of the hook (length of the stem in direction 36) is equal. Thus the aspect ratio taught by Datta is the ratio of hook head diameter to height, or the inverse of the claimed range. Therefore the height-to-hook head diameter ratio of the hooks taught by Datta is $1/0.4 - 1/0.55$, or 1.8 to 2.5, wherein 1.8-2.5 is considered herein to fall within the range of "about 3 or greater" as applicant has not quantitatively defined "about 3". Datta teaches that the height of the hooks is 0.00254 – 0.51 cm (0.0254 – 5.1 mm), and the aspect ratio of diameter to height is 0.4-0.55, thus the diameter of each hook is in the range of 0.01 – 2.8 mm, or 10-2,800 microns, which overlaps the claimed range of about 50 microns or less. (¶ 0070)

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With respect to **claim 4**: The hooks also contain a secondary fastening material, i.e. adhesive.

The attachment means 60 meets all of the claim limitations and thus is inherently effective to adhesively engage an opposing surface comprising the outer cover 42, a polymeric film, with an average adhesive force of 10 nanoNewtons or greater per hair. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, an attachment means comprising adhesive hairs effective to engage an opposing force in the form of a polymeric film) except for a property or function (adhesive force) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

With respect to **claim 5**: Datta teaches a disposable absorbent article comprising a gecko-like fastener including a flexible substrate, a plurality of adhesive hairs in the form of hook shaving adhesive disposed thereon rising from said substrate, said adhesive hairs each having a base section, a midsection, a top section in the form of a hook head, a height of 0.00254 – 0.51 cm, or 0.0254 – 5.1 mm (25.4 microns – 5.1 mm), which overlaps the claimed range of about 0.5 microns to about 8 millimeters, and a diameter of 10-2,800 microns, which overlaps the range of greater than about 0.05 microns. (¶ 0070)

With respect to **claim 6**: Datta teaches hairs/hooks having a geometry of trees, i.e. they

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terminate in a plurality of fine terminating elements. (§ 0071)

With respect to **claim 7**: The hairs have a height of 0.00254 – 0.51 cm, or 0.0254 – 5.1 mm (25.4 microns – 5.1 mm), which overlaps the claimed range of a height of about 2 microns to about 1000 microns. (§ 0070)

With respect to **claim 8**: The hairs have a diameter of a diameter of 10-2,800 microns, which overlaps the claimed range of about 0.05 microns to about 10 microns. (§ 0070)

With respect to **claim 9**: The limitation of hairs spaced apart by a first distance of about 1 micron to about 1000 microns.

With respect to **claim 10**: Datta does not explicitly teach that said hairs are spaced apart by a second distance of about 1 micron to about 1000 microns. However since Datta teaches a hair/hook density that meets the claim limitation of claim 2, there are only a finite number of solutions for spacing and arrangement of the hooks. Datta teaches that such hook density meets a market need with respect to skin-friendly fasteners. (§ 0070) Therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta to meet the limitation of claim 10 with a reasonable expectation of success to provide a skin-friendly fastener. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See KSR International Co. v.

Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)

With respect to **claim 11**: Datta does not explicitly teach that the ratio of a first distance between said hairs to the diameter of said hairs is about 3 to about 100. However since Datta teaches a hair/hook density that meets the claim limitation of claim 2, there are only a finite number of solutions for spacing and arrangement of the hooks (i.e. first distance and second distance ratios). Datta teaches that such hook density meets a market need with respect to skin-friendly fasteners. (¶0070) Therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta to meet the limitation of claim 10 with a reasonable expectation of success to provide a skin-friendly fastener. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)

With respect to **claim 12**: Datta does not explicitly teach that the ratio of a second distance between said hairs to the diameter of said hairs is about 3 to about 100. However since Datta teaches a hair/hook density that meets the claim limitation of claim 2 and a diameter that meets the claim limitation of claim 3, there are only a finite number of solutions for spacing and arrangement of the hooks and the resulting relationship between the spacing and hair/hook dimension. Datta teaches that the diameter (and associated "aspect ratio") of the hook affects how the hook affects the feel of the hook as it comes in contact with a user's skin (¶0076), and that the particular hook diameter taught by Datta and hook density meet a market need with respect to skin-friendly fasteners. (¶0070) Therefore it would be obvious to one of ordinary skill

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in the art to modify the article of Datta to meet the limitation of claim 10 with a reasonable expectation of success to provide a skin-friendly fastener. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

With respect to **claim 13**: The ratio of the height of said hairs to the diameter of said hairs is $1/0.4 - 1/0.55$, or 1.8 to 2.5, which overlaps the claimed range of about 2 to about 1000. (¶ 0070)

With respect to **claim 14**: At least one of said hairs is perpendicular to the plane of said substrate. (Fig. 5)

With respect to **claim 15**: At least one of said hairs is indented at an angle between 0° and 90° to the plane of said substrate. (Fig. 5)

With respect to **claim 16**: At least one of said hairs has the geometry of a tree and therefore is axisymmetric. (¶ 0071)

With respect to **claim 17**: At least one of said hairs has a base that is axisymmetric and an end portion that is flattened. (Fig. 5)

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With respect to **claim 18**: Datta does not explicitly teach that the ratio of the width of said flattened end to the thickness of said flattened end is about 2 to about 25. However since Datta meets all of the remaining claim limitations of claim 18, and there are only a finite number of solutions (i.e. width to thickness ratios as claimed) that meet the market need of a skin-friendly fastener, it would be obvious to one of ordinary skill in the art to modify the article of Datta to meet the claim limitation of claim 18. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

With respect to **claim 19**: Datta does not explicitly teach that the flattened end portion occupies about 5 percent to about 80 percent of said height of said hair. However since Datta meets all of the remaining claim limitations of claim 19, and there are only a finite number of solutions (i.e. percentages of total hook height occupied by the height of the flattened portion as claimed) that meet the market need of a skin-friendly fastener, it would be obvious to one of ordinary skill in the art to modify the article of Datta to meet the claim limitation of claim 19. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

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With respect to **claim 24**: The substrate of Datta is apertured. (¶0080)

With respect to **claim 26**: The thickness of said substrate, specifically the hook backing, comprises a repeating pattern of thickness variations. (¶0081)

With respect to **claim 27**: The substrate of Datta is apertured. (¶0080)

With respect to **claim 37**: The fastener 60 comprises an elastomeric film substrate and thus is stretchable. (¶ 0068)

With respect to **claim 38**: The fastener 60 comprises an elastomeric film substrate and thus comprises elastic regions. (¶ 0068)

With respect to **claim 39**: Datta is silent regarding whether the attachment surface of said fastener is elastic, only that it is flexible, therefore Datta fairly suggests an inelastic attachment surface, as it would be obvious to one of ordinary skill in the art to modify the article of Datta such that the attachment surface is inelastic with a reasonable expectation of success to prevent stretching and subsequent misshaping of the attachment surface that leads to loss of performance of said surface.

With respect to **claim 40**: The fastener 60 is adapted for fastening said article to itself. (¶ 0064)

With respect to **claim 41**: The fastener 60 is considered herein to be adapted for fastening said article to another object, as the fastener 60 contains adhesive. (¶ 0067)

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With respect to **claim 42**: The fastener 60 is adapted for joining two or more components of said article, specifically the front and rear waist regions. (¶ 0064)

With respect to **claim 43**: The fastener 60 comprises part of a side seam of said article. (¶ 0064)

With respect to **claim 44**: The fastener 60 comprises a three-dimensional topography characterized by a series of peaks and valleys defined by the tops of said hooks and the space between adjacent hooks. (¶ 0070)

With respect to **claim 45**: The peaks and valleys alternate in a first direction. (¶ 0070)

With respect to **claim 46**: The groups of hairs are selectively disposed on said valleys of said substrate, and the tops of said hairs define said peaks of the substrate. (¶ 0070)

With respect to **claim 49**: The fastener 60 comprises substantially hair free regions between adjacent rows, or groups, of hair. (¶ 0070)

With respect to **claim 50**: The hairs are disposed substantially uniformly in lateral or longitudinal rows along the fastener. (¶ 0070)

With respect to **claim 51**: Datta does not teach that the hairs are disposed substantially randomly along the fastener. However since Datta teaches uniform distribution and teaches that

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the fastener meets a market end for a skin-friendly adhesive, and there is a finite number of solutions for the distribution of hairs (uniform or random), it would be obvious to one of ordinary skill in the art to modify the article of Datta such that said hooks/hairs of said fastener are disposed substantially randomly along the fastener with a reasonable expectation of success to maintain a skin-friendly fastening means. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (U.S. Patent Application Publication No. 2002/0138064) in view of Full et al (WO 01/49776 A3)

With respect to **claim 20**: Datta does not teach that at least one of said hairs is hollow. Full teaches an adhesive fastener having adhesive hairs wherein at least one of the hairs is hollow. Full teaches that this fastener is usable on a flexible paper or cloth substrate such as in post-it notes and climbing gloves, wherein such fabrics are commonly used in fastener substrates for absorbent articles such as that taught by Datta and the hairs have improved adhesion properties. Thus it would be obvious to one of ordinary skill in the art to modify the article of Datta such that at least one of the hooks/hairs is hollow as taught by Full with a reasonable expectation of success to provide a fastener with improved adhesion properties. ('776, Page 16, lines 5-10)

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With respect to **claim 21**: Datta does not teach that at least one hook/hair is hollow. Full teaches that at least one hair comprises carbon nanotubes. ('776, Page 13, lines 29,30, Page 14, lines 19,20) The motivation to combine the teachings of Datta and Full is stated *supra* with respect to claim 20.

With respect to **claim 22**: Datta does not teach that at least one hook/hair is hollow. Full teaches that said hairs are hollow nanotubes, i.e. the hairs comprise molecules with hollow chambers. The motivation to combine the teachings of Datta and Full is stated *supra* with respect to claim 20. ('776, Page 13, lines 29,30, Page 14, lines 19,20)

With respect to **claim 23**: Datta does not teach that at least one hook/hair is hollow. Full teaches that said hairs are hollow nanotubes, i.e. the hairs comprise molecules of SiOx, a silsequioxane. The motivation to combine the teachings of Datta and Full is stated *supra* with respect to claim 20. ('776, Page 15, lines 9,10)

Claims 25, 28-30 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (U.S. Patent Application Publication No. 2002/0138064) in view of Ahr et al (U.S. Patent No. 4,323,069)

With respect to **claim 25**: Datta does not explicitly teach that the substrate is a liquid impervious web. Ahr teaches a liquid-impervious apertured web suitable for use as a fastener backing. Ahr teaches that the apertures impart flexibility to the film. It would be obvious to one of ordinary skill in the art to modify the article of Datta such that the apertured substrate of the fastener

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comprises the apertured film taught by Ahr to impart flexibility to the fastener, which would in turn provide a more flexible and more comfortable fastener.

With respect to **claim 28**: Datta does not teach a coated substrate. Ahr teaches that the apertured film is coated with acrylic adhesive on at least one side of said film. It would be obvious to modify the article of the combined teaching of Datta and Ahr so as to have a coating that is hydrophilic with a reasonable expectation of success. The article of the combined teaching of Datta and Ahr would thus teach a coating on at least one side of the substrate of the instant fastener.

With respect to **claim 29**: Datta does not teach a coated substrate. Ahr teaches that the apertured film is coated with acrylic adhesive on at least one side of said film, which can be either hydrophilic or hydrophobic. Thus, Ahr fairly suggests coatings of the apertured film that are hydrophilic and coatings that are hydrophobic. It would be obvious to modify the article of the combined teaching of Datta and Ahr so as to have a coating that is hydrophobic with a reasonable expectation of success.

With respect to **claim 30**: Datta does not teach a coated substrate. Ahr teaches that the apertured film is coated with acrylic adhesive on at least one side of said film, which can be either hydrophilic or hydrophobic. Thus, Ahr fairly suggests coatings of the apertured film that are hydrophilic and coatings that are hydrophobic. It would be obvious to modify the article of the combined teaching of Datta and Ahr so as to have a coating that is hydrophilic with a reasonable expectation of success.

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With respect to **claim 34**: Datta does not teach a substrate that is substantially elastic and homogenous. The substrate taught by Ahr is comprised of polyethylene is elastomeric and thus substantially elastic and homogeneous. The motivation to combine the teachings of Datta and Ahr is stated *supra* with respect to claim 25.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (U.S. Patent Application Publication No. 2002/0138064) in view of Moji et al (U.S. Patent No. 4,716,067)

With respect to **claim 31**: Datta does not teach a coating that is a metal oxide. Moji teaches an apertured film with integrated embedded fastener. Moji teaches that the substrate is comprised of titanium that is subsequently anodized, i.e. a titanium dioxide layer, which is a metal oxide layer, is created and thickened on at least one side of the substrate. Moji teaches that said substrate and integrated fastener has a high fastener load capability, therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta by substituting the fastener of Datta for the fastener of Moji to provide a fastener with a high fastener load capability to ensure that the article is secure during wear. ('067, Col. 3, lines 30-35, Col. 4, lines 9-16)

With respect to **claim 32**: The metal oxide is titanium dioxide treated with a primer in the form of a nitrile phenolic adhesive, which is capable of absorbing UV light. The resulting honeycomb substrate layer 15 having titanium dioxide coating treated with UV absorbing adhesive primer is then baked at 200 °F, i.e. the substrate 15 having metal oxide coating treated with UV-

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absorbing material is thermally treated. The motivation to combine the teachings of Datta and Moji is stated *supra* with respect to claim 31.

Claims 33, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (U.S. Patent Application Publication No. 2002/0138064) in view of any of Simon (U.S. Patent No. 4,593,418), Capik et al (U.S. Patent No. 5,354,597) and Dreier (U.S. Patent No. 5,558,660).

With respect to **claim 33**: Datta does not explicitly teach that the substrate comprises regions of elastic material. However, as taught by Simon, Capik et al and Dreier, attachment tabs having elastomeric materials or regions are well-known in the art. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta so as to have regions of elastomeric material comprising elastomeric regions of attachment tabs 32 with a reasonable expectation of success as such tapes provide a more comfortable fit for the wearer by allowing stretching at the waist.

With respect to **claim 35**: Datta does not teach that said substrate contains discrete elastic regions separated by less elastic regions. However, as taught by Simon, Capik et al and Dreier, attachment tabs having elastomeric materials or regions are well-known in the art. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta so as to have regions of elastomeric material comprising elastomeric regions of attachment tabs 32 with a reasonable expectation of success as such tapes provide a more comfortable fit for the wearer by allowing stretching at the waist.

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With respect to **claim 36**: Datta does not teach that said substrate contains discrete elastic regions separated by inelastic regions. However, as taught by Simon, Capik et al and Dreier, attachment tabs having elastomeric materials or regions are well-known in the art. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta so as to have regions of elastomeric material comprising elastomeric regions of attachment tabs 32 with a reasonable expectation of success as such tapes provide a more comfortable fit for the wearer by allowing stretching at the waist.

Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (U.S. Patent Application Publication No. 2002/0138064) in view of any of Cronkrite (U.S. Patent No. 4,229,223) and Robertson et al (U.S. Patent No. 5,279,604)

With respect to **claim 47**: Datta does not teach that said hairs are protected from contamination with other materials until pressed into contact with an opposing surface. However, it is well-known in the art to protect fasteners from contamination when not in use via a removable cover such as a sheet of release material as supported by Cronkrite and Robertson. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Datta such that the hairs are protected from contamination with other materials with a sheet or cover until pressed into contact with an opposing surface with a reasonable expectation of success.

With respect to **claim 48**: Datta fairly suggests a removable cover for reasons stated *supra* with respect to claim 47.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

September 12, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

